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ABSTRACT

Few union leaders, faculty members or administrators would dispute the fact that a viable grievance procedure is one of the cornerstones of a collective negotiated contract. Essential to successful contract administration and harmonious faculty administration relationships is a grievance procedure designed to provide an opportunity to resolve differences informally; a quick and fair hearing, when necessary, limited to contract interpretation; well reasoned decisions based on the facts; and a feeling of satisfaction for all parties arise out of the airing of differences. This report presents the results of an analysis of second and third level grievance reviews under the contract negotiated between the State University of New York and the Senate Professional Association. (Author/MJM)

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SPECIAL REPORT #10

FACULTY GRIEVANCES AT SUNY: THE FIRST TWO YEARS UNDER A NEGOTIATED CONTRACT

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Few union leaders, faculty members or administrators would dispute the fact that a viable grievance procedure is one of the cornerstones of a collectively negotiated contract. Essential to successful contract administration and harmonious faculty-administration relationships is a grievance procedure designed to provide an opportunity to resolve differences informally; a quick and fair hearing, when necessary, limited to contract interpretation; well reasoned decisions based on the facts; and a feeling of satisfaction for all parties arising out of the airing of differences.

In this Special Report, Dr. Ronald P. Satryb presents, in shortened form, the results of his analysis of second and third level grievance reviews under the contract negotiated between the State University of New York and the Senate Professional Association. His analysis should be of special interest to administrators and union officials who are negotiating a contract or seeking ways of improving their record of dispute settlement.

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Director, ACBIS

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Faculty Grievances at SUNY: The First Two Years Under A Negotiated Contract

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A case study of the grievance appeals process[1] under the multi-campus contract negotiated between the State of New York and the Senate Professional Association (SPA)[2] of the State University of New York (SUNY) was completed for the period September 1, 1971 to September 1, 1973.

Written records and transcripts of all grievances appealed beyond the local campus were analyzed. During the two year period, 135 grievance decisions at Step 1 were appealed to Step 2; 57 Step 2 decisions were further appealed to Step 3; and 9 proceeded to the final step, arbitration. The review of grievances at each was limited by terms of the contract including the definition of grievance:

> A grievance is any dispute between an employee or SPA and the State over terms and conditions of employment except those disputes to which Article XXXV (Termination for Cause) is applicable.
>
> The term grievance shall also be deemed to mean a claimed failure by the State to follow the procedural steps provided by articles of the Policies relating to appointment of academic and professional employees or relating to promotion of academic employees (hereinafter referred to as "Policy Articles").[3]

The analysis[4] of records and transcripts suggests that: (1) The grievance review officers, in accordance with the contract provisions, considered procedural matters as the only acceptable basis for grievance. This ruled out consideration of substantive issues. Therefore, the reviewing officer would insure that all local procedures for tenure evaluation were followed, but would not question the substantive decision made under the governance procedure.

(2) Grievants and/or the union continued to appeal grievances for which precedents had already been established in previous reviews. Interviews with representatives of faculty and administration

indicated that this situation was caused by at least two factors: first, the union's need to continually inform members and potential members of their rights under the contract and to keep them aware of grievance reviews and decisions; secondly, political rather than substantive considerations may have influenced the union to continue processing "non-winnable" grievances in order to gain public attention. "Political" in terms of this particular union was used to imply a need to attract new members, and an attempt to provide an indication tc the bargaining unit that the union was very active on their behalf. The union may also have been attempting to establish issues for future contract negotiations by emphasizing certain concerns as to the effectiveness or lack of effectiveness of the grievance procedure.

(3) The power of the reviewing officers and arbitrators was substantially limited by the contract, the Policies of the SUNY Trustees, the rules and regulations of other state agencies, and by state law. Legislatively delegated powers could be altered only through formal negotiations with the State, eventuating in the time-consuming processes of legislative approval. As a result of this situation, the provisions of local campus governance procedures were the only alternative for the resolution of disputes falling outside of the purview of the reviewing officers.

(4) Both the union and/or grievants attempted in several instances to use the grievance procedure as a method of continuing the collective bargaining process. (e.g., An attempt by the non-academic staff to gain the right to observe the academic vacation calendar as well as the vacation credits stipulated in the contract.) In all instances noted, the reviewing officers refused to go beyond what had already been negotiated at the bargaining table.

(5) The grievance procedure was used as the primary method of interpreting the terms of the collective bargaining agreement. (e.g., What is a mutually acceptable definition of "retrenchment" as used in the contract?) It was made quite clear by the reviewing officers that the local campus governance procedures were outside the purview of both the articles of the Agreement and the Policies and, therefore, not subject to interpretation by the grievance procedure.

(6) The written decisions at Step 2 provided more in depth discussion of the issues than did decisions at Step 3. A university official indicated that this resulted from an agreement between SUNY and the Governor's Office of Employee Relations (Step 3).[5] Since Step 2 is an internal University activity, the reviewing officers, representing the highest level of university management, were expected to discuss each case in a comprehensive manner for

the purpose of identifying, clarifying and resolving the issues underlying each grievance in a manner that would guide future behavior of both union members and management. This agreement also provides some indication that the Office of Employee Relations was reluctant to review matters of a traditional academic nature, such as governance, tenure, academic freedom, etc.

(7) Grievants and the reviewing officials appeared to be using different definitions of the term "grievance". Reviewing officials adhered rather strictly to the contract's definition while grievants were willing to contest non-procedural issues such as personality conflicts with administrators or substantive judgments of colleagues sitting on personnel committees. This is a strong indication that local campus governance procedures did not provide a grievance mechanism that could satisfactorily resolve disputes of a personal or substantive nature.

(8) The reviewing officers at Step 2 tended to find in each grievance some issues important enough to provide discussion and conclusions even though the grievance itself was untimely and could have been denied on that basis alone. The substance of the decisions by the reviewing officers indicate that this was done either to offer an interpretation of a specific article in order to set a precedent, or to establish that the basis for the grievance was not reviewable under the present procedure.

(9) Interpretations of the Agreement and the Board of Trustees Policies through the grievance appeals process have basically established the limits of the grievance procedure. (e.g., Grievance Appeal Decision #92, Step 2 - "Criteria for promotion are not mandated by the Policies to be the sole criteria, nor that equal weight be given to each criterion in each case.")[6] Therefore, professional judgment exercised by administrators, or faculty members acting as management (peer evaluation) cannot be questioned under the grievance procedures.

(10) Some issues repeatedly declared not open to resolution by grievance processing were identified by SPA and/or SUNY as matters for future contract negotiation. The grievance procedures themselves, e.g., were renegotiated in 1974, resulting in such changes as: broadening the use of the grievance procedure to include interpretation, application or claimed violation of a specific term or provision of the Agreement; addition of a Disciplinary Procedure (management motivated); and the addition of a Job Security Review Procedure.[7]

(11) There were 37 identifiable types of grievances appealed to Step 2. Categories that had the largest number of grievances

were those related directly to financial benefits and/or job security. The drive toward unionism in higher education combined with steady state staffing and declining enrollments would indicate that these issues will probably continue to increase for at least the next few years. It can, therefore, be expected that negative decisions on renewal of term appointments or the granting of tenure will be questioned through contract or governance grievance procedures. It would appear to be administratively wise to determine where disputes on these issues should be handled, i.e., under th state-wide contract or under local campus procedures.

(12) The frequency of appeal by professional category indicated that 55 percent of the grievance appeals were from the non-teaching professional staff or non-tenured faculty members. Another 22 percent were class action grievances by the union. Therefore, only 23 percent of the grievance appeals originated with associate or full professors. College and university administrators can expect similar proportions as long as job security remains a major issue on the campus.

(13) Only 23 of the grievances appealed above Step 1 were resolved fully or partially in favor of the grievant(s) at the subsequent steps. A surface evaluation would indicate that management was unwilling to resolve issues under the procedure. However, representatives of both faculty and administration agreed that the grievance procedure was being used for other purposes by both the members of the bargaining unit and the union. (e.g., Personal problems, gripes, politics, etc.) This is another indication that additional mechanisms are important for the resolution of non-contract related problems, if the inundation of the contract grievance procedure is to be avoided.

(14) The right to control resources, the campus educational missions, and the assignments of employees were specifically established as management rights by the grievance appeals process. This identification of management rights is one of the chief benefits to higher education administrators under collective bargaining agreements. The administrators roles, powers, authority, and responsibilities tend to be more clearly defined under a collective bargaining model than under a more traditional collegial or political model.

(15) In all grievance reviews in which governance matters were at issue, the reviewing officer held the matters to be outside the purview of the contract grievance procedure. This consistent action on behalf of the Chancellor made some campus officers and faculty more certain of their local prerogatives and duties, and probably increased the effectiveness of local campus governance.

(16) Types of grievances most frequently appealed to Step 2 were: non-renewal of term appointments, continuing appointments, inaccurate salary payments, improper assignments, discrimination, non-promotion, and retrenchment. In addition to the comments already made in #11 above, it can be stated that the employees were using the grievance procedure as a court of last resort for the airing of their frustrations, complaints, and attitudes even though they knew their chance of successful resolution was minor. This once again underlines the need on the local campus for governance mechanisms to which the professional staff can appeal.

(17) Suggestions for revision of the grievance processing were made by both university and union officials. The University suggested that: a) once precedents had been established at Step 2, similar cases should be submitted directly at Step 3; b) elimination of Step 3 and/or establishment of a sub-presidential step on the local campus; and c) extension of time limits for scheduling reviews and issuing responses. The union suggested the extension of time limits for filing grievances, and the elimination of Step 3.

Lengthy interviews with union representatives, and later with university reviewing officers, revealed that this study had implications in two basic areas. First, the conclusions focused on selected technical matters that illustrated some key functions of the grievance procedure: as a means of clarifying the Articles of the Agreement; as a negotiating tool; as an avenue of relief and redress of alleged wrongs by the employee, and staffing problems for contract administration. Secondly, themes were identified that can be described as tests of power and authority under collective bargaining agreements in higher education. These themes include: acceptable subjects for the grievance procedure; management-employee, union faculty, and faculty-faculty conflict; the union role in restricting grievances, and the establishment of management and employee rights.

Campus administrators writing a new contract or rewriting an an old one should keep in mind the general concept that a contract grievance procedure should be designed primarily to resolve disputes over interpretation or application of contract articles. The contract could suggest that procedures for the relief and redress of employee grievances outside the purview of the contract be established within the local governance structure. This will help to prevent clogging the contract grievance procedures with irrelevant disputes. It may also assist in the maintenance and strengthening of a collegial governance structure parallel to the collective bargaining structure.

Finally, several suggestions can be offered to college officials planning to implement a new contract. The first necessity is a positive attitude on the part of all the individuals involved in the administrative process. This requires both an understanding of the process and formal training. An axiom of grievance procedure administration is that disputes should be resolved at the lowest possible managerial level. This in turn requires that the administrators involved be trained in the "fair" processing of grievances, and that they maintain a "neutral" attitude toward the grievant and his complaint. It is also important to remember that employees may be satisfied with the fact that they received a hearing of their complaint regardless of the ultimate resoluation of their dispute.

In conclusion it may be noted that the positive application of the grievance procedure can result in a better definition of the contract articles; a clearer delineation of the lines of power, authority and responsibility; and a meaningful and effective mechanism for the airing or resolution of disputes.

FOOTNOTES

1. The grievance procedure incorporated into the negotiated SUNY contract provided for informal discussion followed by four formal levels of grievance review and appeal. The informal step provided an opportunity for the parties to resolve their differences without the aid of formal review by a third party. If not successful, the faculty member, with or without union support, could submit a formal written grievance to the local campus president for administritive review and decision (Step 1). If not satisfied by the Step 1 decision the grievant could appeal the president's decision to the Chancellor of the University (Step 2). Only the union (SPA) could appeal the Chancellor's decision to the Director of the New York State Office of Employee Relations (Step 3). If the issue was still unresolved, SPA could unilaterally move to binding arbitration (Step 4).

2. SPA was the exclusive bargaining agent for teaching and non-teaching professional employees in 26 units of SUNY: the central office, 4 university centers, 14 colleges of arts and sciences, 4 agricultural and technical colleges, and 3 medical centers. Approximately 16,000 teaching and non-teaching professionals of the University were covered by the contract.

3. Agreement Between the State of New York and the Senate Professional Association. July 1, 1971. p. 5.

4. Ronald P. Satryb, "The Grievance Appeals Process Within the State University of New York: A Descriptive Analysis," Unpublished Dissertation, University of Virginia, June 1974. pp. 4-5.

5. Step 3 - The Office of Employee Relations is part of the Executive Branch of the State of New York and external to the State University of New York.

6. Satryb, Op. Cit., p. 82.

7. For further discussion see: Ronald P. Satryb, "The Evolution of the SUNY Grievance Procedures From the First Contract to the Second," College and University Personnel Journal, January 1975.